

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KENDALL WALKER,

Plaintiff,

9:18-cv-1189 (BKS/CFH)

v.

D. MARTUSCELLO, et al.,

Defendants.

Appearances:

Plaintiff pro se:

Kendall Walker
Rosedale, NY 11422

For Defendants:

Letitia James
Attorney General of the State of New York
Erik Boule Pinsonnault
Assistant Attorney General
The Capitol
Albany, NY 12224

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Pro se Plaintiff Kendall Walker commenced this action under 42 U.S.C. § 1983 asserting claims arising out of his incarceration at Coxsackie Correctional Facility. (Dkt. No. 1). On November 30, 2020, Defendants filed a motion for summary judgment under Fed. R. Civ. P. 56. (Dkt. No. 44). Plaintiff filed a response on February 8, 2021, and Defendants filed a reply on February 11, 2021. (Dkt. Nos. 50, 51). This matter was assigned to United States Magistrate Judge Christian F. Hummel who, on June 21, 2021, issued a Report-Recommendation and Order recommending that Defendants' motion for summary judgment be granted in part and denied in

part. (Dkt. No. 53). Magistrate Judge Hummel advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 53, at 47). No objections to the Report-Recommendation have been filed.

As no objections have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed Magistrate Judge Hummel’s thorough Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 53) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants’ Motion for Summary Judgment (Dkt. No. 44) is **GRANTED IN PART** and the following claims are **DISMISSED WITH PREJUDICE**:

- (1) First Amendment Free Exercise Clause claim based on lack of Jumu’ah services in 2015 as against all defendants;
- (2) First Amendment Free Exercise Clause claim based on the timing of Jumu’ah services in 2016 as against all defendants;
- (3) First Amendment Free Exercise Clause claim based on the rescheduling of the October 2015 Saviour’s Day celebration insofar as asserted against Defendant Martuscello;
- (4) Fourteenth Amendment Equal Protection claims; and it is further


ORDERED that this action is **TERMINATED** as to Defendant Martuscello; and it is further

ORDERED that Defendants' Motion for Summary Judgment (Dkt. No. 44) is **DENIED** insofar as it seeks dismissal of plaintiff's First Amendment Free Exercise Clause claim against Defendants Father Reddie and Barringer based on the rescheduling of the October 2015 Saviour's Day celebration; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: July 26, 2021
Syracuse, New York


Brenda K. Sannes
U.S. District Judge